IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11-1-2007

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THE HONOURABLE MR.JUSTICE K. VENKATARAMAN

C.M.A.No.886 of 2001

1. Ramu (Died)
2. Lakshmi .. Appellants/Petitioners
(2nd Appellant brought on record as the L/R of the deceased sole appellant - vide order dated 4.2.1992 in C.M.P.No.727 of 1992)

vs.

1. H.Ramachandran
2. The Divisional Manager,
The New India Assurance Company Ltd,
1 Bharathi Road, Second Floor,
Arcot Woodland Buildings Complex,
Cuddalore. .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 5.9.1989 made in M.C.O.P.No.298 of 1988 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Cuddalore.

For Appellant : M/s.P.Saritha
For Mr.T.R.Rajaraman

For Respondent-1 : Mr.K.Srinivasan
For Respondent-2 : Mr.C.Ramesh Babu

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JUDGMENT

The original claimant in MATCOP No.298 of 1988 before the Motor Accidents Claims Tribunal (Additional District Judge), Cuddalore has filed the appeal before this Court claiming enhanced compensation.

2. The Motor Accidents Claims Tribunal (Additional District Judge), Cuddalore has awarded compensation of a sum of Rs.40,000/- considering the injuries caused to him and also for pain and suffering due to the said injuries. Since the original claimant felt that the amount is very less compared to the injuries caused to him and for pain

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and suffering which he has undergone, has filed the present appeal. Pending appeal, the original claimant died and hence his wife has been brought on record as legal representative of the deceased original claimant by an order dated 4.2.1992 in C.M.P.No.727 of 1992.

3. Before deciding whether the present appellant is entitled to the enhanced compensation or not, it has to be decided first whether the legal representative of the deceased claimant is entitled to maintain the present appeal or not.

4. Ms.Saritha, the learned counsel appearing for the appellant, contended that since the original claimant has already filed the appeal and before the appeal could be entertained, he died and hence, the legal representative, namely, the wife of the deceased original claimant is entitled to maintain the appeal. The learned counsel for the appellant has cited the decision reported in AIR 1996 M.P. 184 (CHANDRAKANT SONI v. MUKESH SAHU) wherein it has been held as follows:-

> "Thus, summing up all, it will have to be concluded that in controversies arising out of award passed by Motor Accident Claims Tribunal, the right to sue is available to L.Rs. of the deceased claimant.
>
> The present matter is revolving around yet another different point and that is whether such L.Rs. have the right to claim enhancement of compensation by contesting the appeal further after the death of the original claimant. Shri Dandvate has argued that right to get enhanced compensation is a personal right available to such claimant only and it dies along with death of the claimant. Shri Patwa submitted that when such right was available to L.Rs., right to have enhanced compensation should be also available to them. In logical corollary it will have to be concluded that when right to get compensation is available to L.Rs. by prosecuting further the claim or the appeal, right to get enhanced compensation should also be available to them.
>
> Thus, in view of the discussion above, I come to the conclusion that the appeal does not abate and the L.Rs. of the deceased appellant are entitled to get themselves on record and pursue with this appeal."

5. Yet another decision cited by the learned counsel for the appellant is reported in AIR 1994 A.P. 6 (NURANI JAMAL v. NARAM SRINIVASA RAO) wherein it has been held as follows:-

> "Therefore, I have no hesitation to hold that in all cases cause of action survives where there is loss to the estate of the plaintiff."

6. Per contra, the learned counsel appearing for the second respondent, which has been adopted by the learned counsel for the first respondent, submitted that on the death of the original claimant, who

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has filed the appeal, the legal representative cannot maintain the appeal. The learned counsel has drawn my attention to the decision reported in 1992 A.C.J. 181 (M.P.) (GHISALAL v. NIHALSINGH) wherein it has been held as follows:-

> "It is thus clear that it may not be permissible for the legal representatives of the deceased claimant who died during the pendency of the appeal, to prosecute the appeal for enhancement of compensation in respect of injuries sustained by the deceased claimant against the respondents, as is the case here, but the legal representatives of the deceased claimant are certainly entitled to the award of compensation already made by the Tribunal in favour of the claimant before his death and to prosecute this appeal for fixing the liability of payment among the respondents inter se."

Thus, according to the learned counsel, the award of compensation made in favour of the injured-claimant before his death forms a part of his estate. However, the cause of action for enhancement of compensation does not survive on the death of the injured claimant during the pendency of the appeal. Hence, the legal representative of the deceased claimant cannot maintain the appeal.

7. The learned counsel for the second respondent has cited another decision reported in 2000 (IV) C.T.C. 528 (THE MANAGING DIRECT, PANDIYAN ROADWAYS CORPORATION v. S.RAJALAKSHMI) wherein this Court has held as follows:-

> "The contention of learned counsel for the appellant is that the death of the claimant was not due to the accident and as such the legal representatives of the claimant were not entitled to be compensated in respect of the personal injuries suffered by the deceased claimant. Reference is made to a judgment of K.VENKATASWAMI,J., as he then was, in PUSHPAM v. NIRMALA AND ANOTHER, C.R.P.No.2307 of 1988, dated 3.1.1991. In that case, after analysing the earlier decisions, the learned Judge had observed that there was a distinction between a case of death over which the legal representatives could maintain a claim for compensation and the case of the personal injuries suffered by the claimant.
>
> In this context, I have also considered the judgment of the Supreme Court reported in MELAPURATH SANKUNNI EZHUTHASSAN v. THEKITTIL GOPALANKUTTY NAIR, 1986 (1) S.C.C. 118 and M.VEERAPPA v. EVELYN SEGULIRA, 1988 (1) S.C.C. 556. A division Bench of this Court has also held in C.P.KANDASWAMY v. MARIAPPA STORES, 1974 A.C.J. 362, that in the case of an injured claimant the cause of action will not survive in respect of the legal representatives of the claimant. In all the above decisions, the Division Bench as well as the Supreme Court had taken note of Section 306 of the Indian Succession Act and have held that claim for

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compensation in respect of personal injuries will not be available for the legal representatives provided the death was not caused as a result of the accident. The Supreme Court has also pointed out that the position would be different if the suit for damages had resulted in a decree in favour of the plaintiff in which case the decree amount would form part of the estate of the deceased to which the legal representatives would be entitled to. But where no such decree has been passed, the legal representatives of the claimant will not be entitled to compensation due towards personal injuries are concerned."

Thus, according to the learned counsel for the respondents, the legal representative of the deceased original claimant cannot maintain the appeal.

8. Further, the learned counsel for the appellant contended that considering the nature of the injuries and the extent of pain and suffering undergone by the original claimant, the award of a sum of Rs.40,000/- as compensation is very meagre. Per contra, the learned counsel for the respondents contended that the Tribunal has taken into consideration the nature of injuries and the pain and suffering that the claimant undergone has awarded a sum of Rs.40,000/- as compensation which is just and reasonable.

9. Before deciding whether the Tribunal has awarded just and reasonable compensation, let me first decide whether the legal representative of the original claimant, who has filed the appeal, can proceed with the appeal or not. The Tribunal has awarded compensation of a sum of Rs.40,000/- considering the nature of the injury caused to and the pain and suffering undergone by the original claimant. Since it is a personal injury which has been caused to the original claimant for which compensation has been awarded by the Tribunal, the legal representative would at best be entitled to the compensation awarded by the Tribunal, but she cannot proceed with the appeal in respect of enhancement of the compensation more particularly when the compensation has been awarded under the heads of injuries and pain and suffering. The relief claimed for pain and suffering undergone and the injuries sustained by the injured claimant is being personal and he alone can question the award of compensation by the Tribunal as very low. The legal representatives cannot prosecute or proceed with the appeal which has been instituted by the deceased claimant. The compensation in respect of personal injuries will not be available for the legal representatives of the claimant, provided the death was not caused as a result of the accident.

10. Furthermore, the Tribunal, considering the nature of injuries caused to the deceased original claimant and also considering the pain and suffering undergone by the him, has awarded a consolidated amount of Rs.40,000/-. The said order of the Tribunal cannot be considered to be erroneous.

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11. Thus, the order of the Motor Accidents Claims Tribunal (Additional District Judge), Cuddalore dated 5.9.1989 made in MACTOP No.298 of 1988 is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dpp

To

1. The Motor Accidents Claims Tribunal (Additional District Judge), Cuddalore.

2. The Record Keeper,
V.R.Section, High Court, Madras.

1 cc To Mr.C.Ramesh Babu, Advocate, SR.2552.

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